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No. 81-2057

Supreme Court of the United States

OCTOBER TERM, 1981

ALAN J. KARCHER, Speaker,
NEW JERSEY ASSEMBLY, *et al.*,

Appellants,

vs.

GEORGE T. DAGGETT, *et al.*,

Appellees.

On Appeal From the United States District Court for the District of New Jersey

MOTION OF APPELLEES EDWIN B. FORSYTHE, *ET AL.* TO AFFIRM

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Questions Presented

1. Whether, in light of the District Court's unanimous finding that the New Jersey Legislature did not seek to preserve minority voting strength in enacting P.L. 1982, c.1, the legal issue of preservation of minority voting strength in congressional redistricting is not properly presented by this appeal and is therefore so unsubstantial as not to need further argument.

2. Whether appellants' failure to produce evidence in the District Court to establish the nature or extent of any actual "statistical imprecision" in the 1980 decennial census, in New Jersey or in the United States as a whole, renders their contention that such claimed imprecision can justify population deviations in congressional districts so unsubstantial as not to need further argument.

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Appellees Edwin B. Forsythe, Matthew J. Rinaldo, Millicent Fenwick, Harold C. Hollenbeck, James A. Courter, Margaret S. Roukema, Christopher H. Smith, Thomas Dunn, Livio Mancino, Rev. Millard D. Birt, Rafael Fajardo, Margaret Dougherty, Maretta N. Jackson and C. Joseph Lillo respectfully move this Court, pursuant to Rule 16.1(c), to affirm the judgment of the three-judge

United States District Court for the District of New Jersey on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Constitutional Provision and Statutes Involved

Article I, Section 2 of the Constitution of the United States:

> Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
>
> No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.
>
> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty

Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

13 U.S.C. §§ 141(a) and 141(b) (Supp. 1981):

§ 141. Population and other census information, tabulation for legislative apportionment.

(a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date", in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.

(b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

New Jersey P.L. 1982, c.1, the congressional districting statute at issue on this appeal, is set forth as Appendix A to the present motion. Appendix A also includes a map of the congressional districts created by P.L.1982, c.1.

Statement of the Case

After the publication of the results of the 1980 decennial census, the Clerk of the United States House of Representatives notified the Governor of New Jersey pursuant to 2 U.S.C. § 2a(b) that the number of representatives to which New Jersey is now entitled has been reduced from fifteen to fourteen. This change rendered the state's previous apportionment of congressional districts unconstitutional, and imposed upon the New Jersey Legislature the duty to reapportion the state into fourteen congressional districts in conformity with the mandate of Article I, § 2 of the Constitution, as interpreted by this Court in *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969), and subsequent cases. Both houses of the Legislature passed a congressional redistricting bill on January 18, 1982. On the following day, his last in office, former Governor Brendan T. Byrne signed the bill into law as P.L. 1982, c.1.

Appellees instituted an action in the United States District Court for the District of New Jersey on February 9, 1982 (*Forsythe, et al.* v. *Kean, et al.,* Civil Action No. 82-388) to declare P.L. 1982, c.1 unconstitutional and to enjoin its enforcement, principally on the ground that the availability of other redistricting plans which created smaller population deviations than the .6984% overall deviation of P.L. 1982, c.1 rendered the deviation of the enacted plan "not unavoidable" and "not justified" within the meaning of *Kirkpatrick* v. *Preisler.* A three-judge

District Court convened pursuant to 28 U.S.C. § 2284(a) heard oral argument on February 19 and 26, 1982. Between those two dates, the parties took the depositions of a number of legislative leaders and submitted affidavits and exhibits to the court. The District Court consolidated the action with an earlier case (*Daggett* v. *Kimmelman, et al.*, Civil Action No. 82-297) and further consolidated the applications for preliminary and permanent injunctive relief pursuant to Fed.R.Civ.P. 65(a). With the consent of all parties, the depositions, affidavits and other exhibits were marked in evidence on February 26, 1982. No oral testimony was taken.

On March 3, 1982, with one judge dissenting, the District Court filed an opinion granting appellees' application for a declaratory judgment of unconstitutionality and for preliminary and permanent injunctions against the conducting of primary or general congressional elections pursuant to P.L. 1982, c.1. (Appendix A to Jurisdictional Statement, hereinafter "JSApp. A"; page references to Appendix will be cited "——a").

The court found from the deposition testimony that the Legislature was concerned with criteria other than population equality in considering competing redistricting plans, including the preservation of the influence in Congress of certain senior Democratic incumbents, a desire to keep counties and municipalities intact, and preservation of the cores of pre-existing districts. (6a) Though the legislative leaders also claimed to have sought to "protect minority interests" in drawing district lines, both the majority and dissenting opinions found as a fact that this claimed motivation was merely a pretext and bore no relation to the deviations created by P.L. 1982, c.1. (9a, 11a) The dissenting judge began his opinion by registering his agreement with the majority in this regard:

> I join fully in the court's findings of fact. . . . In particular, *I agree* that the only effort made by the Democratic legislative leadership to comply with *Kirkpatrick* v. *Preisler*, 394 U.S. 526 (1969) was Mr. Karcher's instruction that no plan would be considered which had a population deviation greater than one per cent, and *that the minorities' concentration justification for the deviations which were produced must on this record be rejected as pretextual.*

Dissenting opinion of Gibbons, J. (11a) (emphasis added)

The basis of the dissent was its author's view that *Kirkpatrick* v. *Preisler* permits toleration of purportedly *de minimis* population variances "which have no statistically relevant effect on relative representation," (13a) despite the Court's express mandate of precise mathematical equality "as nearly as is practicable." *Wesberry* v. *Sanders*, 376 U.S. 1, 7-8 (1964); *Kirkpatrick* v. *Preisler*, *supra*, 394 U.S. at 530-531. Neither the majority nor the dissent made any finding concerning any statistical imprecision in the 1980 census, but the dissent nonetheless would have held that the overall deviation created by P.L. 1982, c.1 "is smaller than the recognized margin of undercounting in the census." (14a) Neither opinion stated any view concerning what that 1980 "margin of undercounting" was in New Jersey or in the United States as a whole, or by whom it was so "recognized."

A judgment embodying the District Court's disposition was filed on March 8, 1982. (JSApp. B) On the same day, the three-judge District Court unanimously denied appellants' application for a stay pending appeal to this Court, as well as their alternative application for a stay pending a stay application in this Court. Appellants filed a notice of appeal in the District Court on March 8, 1982. (JSApp. C)

On March 15, 1982, Justice Brennan stayed the judgment of the District Court pending final determination of the appeal. (JSApp. D) On March 29, 1982, the Court denied motions to vacate the stay or to expedite the schedule for appeal in light of the scheduled June 8, 1982 congressional primary elections, (JSApp. E) and Justice Brennan denied a further motion to modify the stay on April 13, 1982. (JSApp. F)

ARGUMENT

1. The District Court properly concluded that it was unnecessary to decide whether the goal of concentration of minority voters can justify deviation from population equality in congressional districts, where it found as a fact that the Legislature had not been actuated by such a concern and that the population deviations in P.L. 1982, c.1 had not resulted from efforts to preserve minority political power.

Appellants contend that "[i]t is undisputed that the avoidance of the dilution of minority voting strength was an important consideration in the adoption of P.L. 1982, c.1, as opposed to alternatives proposed to the Legislature." (Jurisdictional Statement [hereinafter "JS- "], at 12) This assertion is simply false. Though Assembly Speaker Alan J. Karcher and Senator Matthew Feldman claimed in their depositions that the Legislature acted from such a concern, the District Court unanimously rejected that testimony as "pretextual" (11a) and without causal relationship to the population deviations created by the statute. (9a) The court further found that the statute's placement of the heavily-black City of Orange in the 93%-white Eleventh District instead of the predominantly black Tenth District was "difficult to reconcile" with appellants' claimed goal of preserving minority voting strength. (9a-10a)

The District Court's findings of fact must be upheld unless clearly erroneous. *City of Rome* v. *United States*, 446 U.S. 156, 183 (1980). In the present instance, the unanimous factual findings of both the majority and dissenting judges are unassailable.

Contrary to the impression created by Point 3 of the Jurisdictional Statement, (JS-11) the District Court did not rule as a matter of law that a legislature cannot justify population deviations in congressional districts by a concern for the avoidance of dilution of minority voting strength.[1] The District Court did not reach this legal issue because all three judges unanimously found as a matter of fact that the New Jersey Legislature was not actuated by such a concern in enacting P.L. 1982, c.1. When asked by the District Court at oral argument whether he had any evidence to demonstrate that the

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[1] Appellants assert that this Court held in *United Jewish Organizations* v. *Carey*, 430 U.S. 144, 161-162 (1977) that the avoidance of dilution of minority voting strength is "a constitutionally permissible objective." (JS-14) It should be noted, however, that *United Jewish Organizations* was a state legislative redistricting case under the preclearance provisions of the Voting Rights Act of 1965, and did not involve congressional redistricting. The standard of "substantial" population equality among state legislative districts under the Fourteenth Amendment is significantly less demanding that the test of precise mathematical equality among congressional districts, "as nearly as practicable," pursuant to Article I, §2. *See, e.g., Chapman* v. *Meier*, 420 U.S. 1 (1976); *Gaffney* v. *Cummings*, 412 U.S. 735, 741-742 (1973); *Mahan* v. *Howell*, 410 U.S. 315, 322 (1973). This Court has not yet held that the precise population equality mandated for *congressional* districts may be sacrificed to avoid dilution of minority voting strength. That question is not properly presented by the instant appeal, however, because the District Court found as a fact that the deviations created by P.L. 1982, c.1 did not result from any legislative solicitude for minority rights. (9a-11a)

districts were drawn in order to avoid the dilution of minority strength, counsel for appellants was forced to concede that he could not "say that happened with certainty. There were many conversations and judgments which went into the passage of the present law." (Transcript of Proceedings, Feb. 26, 1982, at 47) Indeed, Assembly Speaker *Pro Tem* Christopher Jackman could not even recall whether P.L. 1982, c.1 had been defended in debate on the ground that it avoided dilution of minority power. Jackman Deposition at 47 (J.Ex. 2)

Moreover, appellants' claim that "P.L. 1982, c.1 protects minorities from having their votes diluted better than any of the alternatives presented to the legislature and relied upon by plaintiffs in this action" is false. (JS-12) The affidavit of Samuel A. Alito, Executive Director of the Office of Legislative Services of the New Jersey Legislature, compiled for the District Court the minority racial characteristics of the congressional districts created by each redistricting plan available to the Legislature. (J.Ex. 4) The Alito Affidavit demonstrates that the Tenth District created by P.L. 1982, c.1 (identified in the affidavit by its bill number as S-711) is 54.75% black. By contrast the Tenth District which would have been created by A-3817, which had an overall population deviation of only .451% as opposed to the enacted law's .6984%, would have been 56.70% black.

The evidence before the District Court demonstrated that there were at least four redistricting bills available to the New Jersey Legislature which resulted in smaller overall population deviations than P.L. 1982, c.1 and also protected minority voting power in the Tenth District. The District Court relied upon the following four plans[2]

[2] The list of plans at JS-12, n.12 is inaccurate.

in support of its conclusion "that the .6984% population deviation of P.L. 1982, c.1 is not unavoidable" (8a):

Bill No.	*Sponsor*	*Date Proposed*[3]	*Deviation*	*% Black-10th Dist.*
P.L. 1982, c.1 (S-711)	Feldman	1/12/82	.6984%	54.75
A-3547	DiFrancesco	1/ 4/82	.1252%	52.80
A-3817	Hardwick	1/11/82	.4515%	56.70
A-614	Bennett	1/18/82	.1369%	53.21
A-615	Kavanaugh	1/18/82	.0293%	53.45

As the District Court observed, the City of Orange is 57.30% black. A-3817 places Orange in the 56.70%-black Tenth District, while P.L. 1982, c.1 places Orange in the 93%-white Eleventh District.

In summary, therefore, the District Court correctly found as a matter of fact that appellants' "minority dilution" excuse for the Legislature's outright failure to adopt the available redistricting plan which achieved as nearly as practicable the precise population equality required by *Kirkpatrick* v. *Preisler, supra,* 394 U.S. 526 (1969) and *White* v. *Weiser,* 412 U.S. 783 (1973), was "pretextual" and unrelated to the Legislature's adoption of the present law. Since this finding of fact is firmly supported by the evidence below, and is certainly not clearly erroneous, it cannot be disturbed and must govern this appeal. Based on this factual finding, in which both the majority and

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[3] Contrary to the assertion in the Jurisdictional Statement that A-614 and A-615 were "submitted to the legislature after P.L. 1982, c.1 became law," (JS-12) these bills were introduced on January 18, 1982 and P.L. 1982, c.1 was not enacted until January 19, 1982. A-3817, which has a greater black percentage in the Tenth District than P.L. 1982, c.1, was introduced *before* the bill which was ultimately enacted as P.L. 1982, c.1.

dissenting judges joined, the District Court properly held that it was unnecessary for it to decide the legal issue appellants now urge this Court to decide in the first instance: whether efforts to avoid dilution of minority voting power would justify avoidable population deviations in congressional districts. Since the District Court did not decide this legal question because it was obviated by the court's findings of fact, the issue is not properly presented for decision in this Court.

2. The District Court properly declined to consider any purported statistical imprecision in the 1980 census in assessing the validity of P.L. 1982, c.1, since the record before it was devoid of any reliable basis for determining the nature or extent of any such imprecision.

Appellants assert that the District Court erred in invalidating P.L. 1982, c.1 because the population deviations created by the statute, which the court found to be greater than those of other redistricting plans which were available to the Legislature, "were within the statistical imprecision of the census." (JS-7) Once again, the factual record before the District Court does not support appellants' claim and renders the "census imprecision" issue so unsubstantial as not to warrant oral argument.

The sole purported support in the record for appellants' claim that the overall population deviation of P.L. 1982, c.1 is less than the statistical imprecision of the census was the "Statement of James Trussell." (Ex. "DFLH-5" below) Contrary to the implication of the Jurisdictional Statement, (JS-8) Dr. Trussell did not "testify" but merely submitted an unsworn "statement" which he "certified" to be correct. Dr. Trussell's conclusions are mixed and

contradictory, and provide absolutely no reliable basis for any assessment of the statistical accuracy or imprecision of the 1980 census.

For example, Dr. Trussell initially states that the 1980 census overcounted the actual population of the United States:

> The situation, however, is quite different in 1980. The preliminary demographic estimate indicates an actual *overcount* in the United States population of four-tenths of one percent (.4%). Already many demographers have suggested that this estimate is so low because the Census Bureau uses too low a net immigration figure. If the net immigration figure is raised to account for a *presumed stock of illegal aliens counted in the census,* then the estimate of the undercount would be consequently raised.

Statement of Trussell, at ¶ 7, p. 5 (emphasis in original). Then Dr. Trussell candidly admits that he cannot even estimate the extent of any census imprecision in New Jersey:

> The undercount for New Jersey in the 1980 census is unknown, and no reliable methodology exists for estimating it.

Statement of Trussell, at ¶ 14, p. 8. Although he points out that "all the evidence to date indicates that all places are not undercounted to the same extent, since the undercount rate has been shown to depend on race, sex, age, income and education," ¶ 13 at p. 8, Dr. Trussell nevertheless opines that "I see no reason to believe" that the New Jersey undercount "is below the national average." ¶ 14, at pp. 8-9.

The problems with Dr. Trussell's "analysis" are endless. He "see[s] no reason to believe" that New Jersey's census undercount is below the national average undercount, whatever that may be, but also "see[s] no reason to believe" that New Jersey's undercount "would be uniformly spread over all municipalities." ¶ 14, at p. 9. Why Dr. Trussell nevertheless sees a reason to believe that the national undercount would be uniformly spread over all states, so that New Jersey's undercount would not be below the national average, is not explained.

Moreover, nowhere in his statement does Dr. Trussell state with any assurance what the "national average" undercount is. All he can provide is a "preliminary estimate," and his preliminary estimate of the "national average" reflects an *overcount* of .4%. ¶ 7, at p. 5. He would adjust this figure "to account for a *presumed stock of illegal aliens counted in the census*," *id.* (emphasis in original), and without further elucidation arrives at a "conclusion" that "the undercount in the 1980 Census is likely to be above one percent, once an estimate of the number of illegal aliens is explicitly included in the demographic equation." ¶ 13, at p. 3. The critical role played in his calculations by illegal aliens, who cannot vote and are not entitled to representation in congressional elections, highlights the danger of reliance upon this kind of shifting, speculative extrapolation in determining the constitutional validity of a congressional redistricting statute.

In addition, appellants disregard the fact that reliance on the census for the determination of congressional representation is mandated by the Constitution. Article I, § 2, cl. 3 provides in pertinent part as follows:

> Representatives shall be apportioned among the several States which may be included within this

> Union, according to their respective numbers. The actual enumeration shall be made . . . within every subsequent term of ten years, in such manner as [Congress] shall by law direct.

Pursuant to this clause, Congress directed the Secretary of Commerce to take a decennial census in 1980 and every ten years thereafter. 13 U.S.C. § 141(a) (Supp. 1981). Congress has further directed that this "tabulation of total population by States" be used for the apportionment of Representatives in Congress among the several States. 13 U.S.C. § 141(b) (Supp. 1981) It was precisely such an apportionment which resulted in the reduction of New Jersey's congressional representation from fifteen to fourteen, and which necessitated the enactment of a new congressional redistricting statute by the New Jersey Legislature.

In summary, the constitutional mandate is "precise mathematical equality . . . as nearly as practicable," *Kirkpatrick* v. *Preisler, supra,* 394 U.S. at 530-531, and the constitutional and statutory basis for assessing state compliance with that standard is the decennial census. Regardless of the existence or nature of any statistical imprecision in the 1980 census, on which even experts cannot agree and of which no reliable showing was made below, the census is "the best population data available to the legislature" and the sole legal standard for the measurement of the population of New Jersey's congressional districts. *Kirkpatrick* v. *Preisler, supra,* 394 U.S. at 528. The Trussell Statement crystallizes the wisdom of the District Court's decision not to rely upon unproved, speculative estimates of purported variances in the census as a basis for constitutional analysis.

Nor does the dissent below provide support for appellants' contention. Though he recites Census Bureau

estimates of the 1970 census' "margin of error," Judge Gibbons makes no finding concerning what the statistical imprecision of the *1980* census might be—nor could he have on this record. The dissent takes the position that *Kirkpatrick* bars avoidable population deviations in congressional districts only to the extent that such deviations "achieve statistically significant dilutions of the relative representation of voters in larger districts when compared with that of voters in smaller districts." (13a) Then, without reference to any facts in the record which are claimed to establish a "statistically relevant" level for the 1980 census, the dissent simply states that the deviation of P.L. 1982, c.1 "falls within the . . . category" of "*de minimus* [sic] population variances which have no statistically relevant effect on relative representation." *Id.*

The limitations of the record below, which constrained the District Court not to decide the "census error" argument presented here, similarly render this issue so unsubstantial as not to warrant oral argument in this Court. For these reasons, the motion to affirm should be granted.

3. The District Court properly ruled that the population deviations in the congressional districts created by P.L. 1982, c.1 were not unavoidable, and that the statute did not achieve as nearly as practicable the precise population equality mandated by Article I, § 2 of the Constitution.

Appellants contend that "the District Court's decision would require that most reapportionment plans based on the 1980 census be held unconstitutional." (JS-5) This claim misses the constitutional point of *Kirkpatrick* v. *Preisler, supra,* 394 U.S. 526, and *White* v. *Weiser, supra,* 412 U.S. 783, which made clear that compliance with Article I, § 2 depends on the particular facts of each case in each state. Justice Brennan straightforwardly summarized the constitutional mandate in *Kirkpatrick*:

> Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes. Therefore, *the command of Art. I, § 2,* that States create congressional districts which provide equal representation for equal numbers of people *permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown.*

394 U.S. at 531 (emphasis added). There can be no question from the record before this Court, as elucidated in both the majority and dissenting opinions below, that the population variances created by P.L. 1982, c.1 were neither unavoidable nor justified.

Moreover, appellants' contention that other cases in other districts have sustained more deviant plans is simply immaterial:

> The whole thrust of the "as nearly as practicable" approach is inconsistent with the adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case. The extent to which equality may practicably be achieved may differ from State to State and from district to district.

394 U.S. at 530. The only question before the District Court in the present case was whether New Jersey could have done better than it did in achieving, "as nearly as practicable," the "precise mathematical equality" required by the Constitution. That is also the only issue properly raised on appeal, and the District Court's well-supported and unanimous findings of fact require that its judgment be affirmed.

There can be no question on this record that New Jersey had available to it redistricting plans which would have achieved far more precise mathematical equality than does P.L. 1982, c.1[4], and that the Legislature simply refused

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[4] A-3547, proposed January 4, 1982, .1252%; A-3817, proposed January 11, 1982, .4515%; A-614, proposed January 18, 1982, .1369%; A-615, proposed January 18, 1982, .0293%. An alternative plan by Prof. Ernest C. Reock, Jr. of Rutgers University was sent to all legislators as early as August 1981, but was rejected by the legislative leadership as insufficiently partisan. *See* Letter from Assembly Speaker Christopher J. Jackman to Ernest C. Reock, Jr., dated August 28, 1981, attached to the opinion of the District Court as Appendix B. (JSApp. A, 23a-29a) As the District Court observed, the Reock plan would have created a total deviation of only .3250%. As it was later amended to take into account changes in the census enumeration for East Orange, the Reock plan's total deviation dropped to only .2960%. (8a) A-614 would have created a deviation of only .0294% more than 23 times smaller than that created by P.L. 1982, c.1. (8a; *see* Affidavit of Samuel A. Alito, J.Ex. 4)

to give them good-faith consideration.[5] Since the District Court also unanimously rejected appellants' factual assertions of "justification" for the Legislature's failure to enact a more precisely equal plan, appellants' claims are so unsubstantial as not to need oral argument. *See* Point 1, *supra*, at 7-11.

This Court has recently summarily affirmed a number of District Court judgments which had been challenged on the similar ground that they gave insufficient deference to state policies. *See, e.g., Orwoll* v. *LaComb* (D. Minn.

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[5] The District Court, in weighing appellants' claims of good faith, evaluated the Legislature's response to the available alternative redistricting plans which achieved greater population equality than P.L. 1982, c.1. In particular, the court traced the legislative leadership's perfunctory reception and swift rejection of the plan submitted by Professor Reock, which would have decreased the population deviation.

The reply to Professor Reock by Speaker Jackman, which the District Court majority termed "remarkable" (5a) and the dissenting judge assessed as "harshly partisan" and "disedifying, to say the least," (13a) is only one example of the Legislature's indifference to the constitutional mandate. Another alternative plan was introduced in the prior session of the Senate as S-3549, and reintroduced in the new Legislature and cited by the District Court as A-614. (8a) A-614 had a total percentage deviation of only .1369%, as compared to the .6984% deviation in P.L. 1982, c.1. Although the deviation in A-614 was less than one-fifth of that in the bill that was enacted, the enacted bill's sponsor, Senator Matthew Feldman, admitted in his deposition that he and the rest of his Senate majority had treated the predecessor of A-614 as a "charade." The bill was considered late at night, Mr. Feldman recounted, and at night "[i]t has been a proven history of the New Jersey State Legislature that you relax and the tension isn't there and so there is some degree of 'horseplay.'" In short, according to Senator Feldman, though he knew it had a low population deviation A-614 received only "tongue-in-cheek treatment" and was not passed. Deposition of Matthew Feldman, at 67-68 (J.Ex. 1).

1982), *aff'd mem.* (No. 81-1770, May 17, 1982); *Schatzle* v. *Kirkpatrick* (No. 81-1731, May 17, 1982), *aff'g mem. Shayer* v. *Kirkpatrick* (W.D. Mo. 1982). In the latter case, the Court rejected as unsubstantial the appellants' assertion that *Kirkpatrick* v. *Preisler, supra,* 394 U.S. 526 (1969), should be overruled. Appellees respectfully submit that the District Court's legal analysis and restrained judgment in the present case are a faithful and unexceptionable application of *Kirkpatrick* and its progeny, and that the motion to affirm should therefore be granted. In light of the scheduled June 8, 1982 congressional primary election and the stay previously entered by Justice Brennan pending the Court's action on the Jurisdictional Statement, appellees further respectfully request that the Court announce its decision on the motion before that date.

CONCLUSION

For the foregoing reasons, the judgment of the United States District Court for the District of New Jersey should be affirmed.

Respectfully submitted,

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Dated: May 20, 1982

On the Motion:

BERNARD HELLRING
JONATHAN L. GOLDSTEIN
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APPENDIX A

Senate, No. 711

STATE OF NEW JERSEY

INTRODUCED JANUARY 12, 1982

By Senator FELDMAN

(Without Reference)

AN ACT creating districts for the election of members to the House of Representatives of the United States of America to serve in the 98th Congress and each subsequent Congress, and repealing sections 1 and 2 of P. L. 1966, c. 156 and P. L. 1981, c. 561.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Congressional District Act for the State of New Jersey (1982)."

2. For the purpose of electing members of the House of Representatives of the United States of America from the State of New Jersey to serve in the 98th Congress and each subsequent Congress, the State of New Jersey shall be divided into the following 14 single-member districts:

First. The county of Gloucester and that portion of the county of Camden embracing Audubon, Audubon Park, Barrington, Bellmawr, Berlin, Berlin township, Brooklawn,

Camden, Chesilhurst, Clementon, Gibbsboro, Gloucester township, Haddonfield, Haddon Heights, Hi-Nella, Laurel Springs, Lindenwold, Magnolia, Mount Ephraim, Pine Hill, Pine Valley, Runnemede, Somerdale, Stratford, Tavistock, Voorhees, Waterford, Winslow, and Woodlynne.

Second. The counties of Salem, Cumberland, Cape May, and Atlantic that portion of the county of Ocean embracing Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Little Egg Harbor, Long Beach, Ocean, Ship Bottom, Stafford, Surf City, Tuckerton, and that portion of the county of Burlington embracing Bass River, Tabernacle and Washington.

Third. That portion of the county of Monmouth embracing Aberdeen, Allenhurst, Asbury Park, Atlantic Highlands, Avon, Belmar, Bradley Beach, Deal, Eatontown, Englishtown, Fair Haven, Hazlet, Highlands, Interlaken, Keansburg, Keyport, Loch Arbour, Long Branch, Manalapan, Manasquan, Matawan, Middletown, Monmouth Beach, Neptune city, Neptune township, Oceanport, Ocean, Red Bank, Sea Bright, Sea Girt, South Belmar, Spring Lake, Spring Lake Heights, Union Beach, West Long Branch, that portion of the county of Ocean embracing Bay Head, Brick, Lakewood, Mantoloking, Point Pleasant Beach, Point Pleasant, and that portion of the county of Middlesex embracing Old Bridge.

Fourth. That portion of the county of Burlington embracing Beverly, Bordentown city, Bordentown township, Burlington city, Burlington township, Chesterfield, Cinnaminson, Delanco, Delran, Edgewater Park, Florence, Mansfield, Maple Shade, Palmyra, Pemberton borough, Pemberton township, Riverside, Riverton borough, Springfield,

Willingboro, Wrightstown and Fieldsboro, that portion of the county of Camden embracing Merchantville and Pennsauken, that portion of the county of Mercer embracing East Windsor, Ewing, Hamilton, Hightstown, Lawrence, Trenton, Washington and West Windsor, that portion of the county of Middlesex embracing Plainsboro and that portion of the county of Monmouth embracing Allentown, Roosevelt and Upper Freehold.

Fifth. That portion of the county of Bergen embracing Allendale, Closter, Cresskill, Demarest, Harrington Park, Haworth, Ho-ho-kus, Mahwah, Midland Park, Montvale, Northvale, Northvale, Old Tappan, Oradell, Park Ridge, Ramsey, Ridgewood, River Edge, River Vale, Rockleigh, Saddle River, Upper Saddle River, Waldwick and Wyckoff, that portion of the county of Hunterdon embracing Alexandria, Bethlehem, Bloomsbury, Delaware, East Amwell, Flemington, Franklin, Frenchtown, Hampton, Holland, Kingwood, Lambertville, Milford, Raritan, Stockton, Union, West Amwell and that portion of the county of Mercer embracing Hopewell, Hopewell township and Pennington, that portion of the county of Morris embracing Boonton, Boonton township, Denville, Jefferson, Mine Hill, Montville, Mount Arlington, Mount Olive, Randolph and Roxbury, that portion of the county of Passaic embracing Ringwood and West Milford, that portion of the county of Sussex embracing Branchville, Frankford, Hampton, Lafayette, Montaque, Sandyston, Stillwater, Sussex, Vernon, Walpack and Wantage and that portion of the county of Warren embracing Alpha, Belvidere, Blairstown, Franklin, Greenwich, Hackettstown, Hardwick, Harmony, Hope, Knowlton, Liberty, Lopatcong, Oxford, Pahaquarry, Phillipsburg, Pohatcong, Washington, Washington township and White.

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Sixth. That portion of the county of Middlesex embracing Carteret, East Bruswick, Edison, Helmetta, Highland Park, Metuchen, Milltown, New Brunswick, Perth Amboy, Piscataway, Sayreville, South Amboy, South Plainfield, South River, Spotswood and Woodbridge and that portion of the county of Union embracing Linden, Rahway and Winfield.

Seventh. That portion of the county of Mercer embracing Princeton, Princeton township, that portion of the county of Middlesex embracing Cranbury, Dunellen, Jamesburg, Middlesex, Monroe, North Brunswick and South Brunswick, that portion of the county of Monmouth embracing Freehold, Freehold township, Marlboro and Millstone, that portion of the county of Somerset embracing Bound Brook, Franklin, Manville, Millstone, North Plainfield, Rocky Hill and South Bound Brook and that portion of the county of Union embracing Clark, Cranford, Elizabeth, Fanwood, Garwood, Plainfield, Roselle, Roselle Park, Scotch Plains and Westfield.

Eighth. That portion of the county of Bergen embracing Franklin Lakes, Garfield, Oakland and Wallington, that portion of the county of Morris embracing Butler, Dover, Kinnelon, Lincoln Park, Peqannock, Riverdale, Rockaway, Rockaway township, Victory Gardens and Wharton and that portion of the county of Passaic embracing Bloomingdale, Clifton, Haledon, Hawthorne, North Haledon, Passaic, Paterson, Pompton Lakes, Prospect Park, Wanaque and Wayne.

Ninth. That portion of the county of Bergen embracing Alpine, Bergenfield, Bogota, Carlstadt, Cliffside Park, Dumont, East Rutherford, Edgewater, Elmwood Park,

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Emerson, Englewood, Englewood Cliffs, Fair Lawn, Fairview, Fort Lee, Glen Rock, Hackensack, Hasbrouck Heights, Hillsdale, Leonia, Lodi, Maywood, Moonachie, New Milford, Norwood, Paramus, Ridgefield Park, Rochelle Park, Rutherford, Saddle Brook, South Hackensack, Teaneck, Tenafly, Teterboro, Washington, Westwood, Woodcliff Lake and WoodRidge.

Tenth. That portion of the county of Essex embracing East Orange, Glen Ridge, Irvington, Newark and South Orange, that portion of the county of Union embracing Hillside, and that portion of the county of Hudson embracing Harrison.

Eleventh. That portion of the county of Bergen embracing North Arlington, that portion of the county of Essex embracing Belleville, Bloomfield, Caldwell, Cedar Grove, Essex Fells, Fairfield, Livingston, Lyndhurst, Maplewood, Montclair, North Caldwell, Nutley, Orange, Roseland, Verona, West Caldwell and West Orange, that portion of the county of Hudson, embracing East Newark, Kearny and Secaucus, that portion of the county of Morris embracing East Hanover, Mountain Lakes and Parsippany-Troy Hills, and that portion of the county of Passaic embracing Little Falls, Totowa and West Paterson.

Twelfth. That portion of the county of Essex embracing Millburn, that portion of the county of Hunterdon embracing Califon, Clinton, Clinton township, Glen Gardner, High Bridge, Lebanon, Lebanon township, Readington and Tewksbury, that portion of the county of Morris embracing Chatham, Chatham township, Chester, Chester township, Florham Park, Hanover, Harding, Madison, Mendham, Mendham township, Morris Plains, Morris town-

ship, Morristown, Netcong, Passaic and Washington, that portion of the county of Somerset embracing Bedminster, Bernards, Bernardsville, Branchburg, Bridgewater, Far Hills, Green Brook, Hillsborough, Montgomery, Peapack-Gladston, Raritan, Somerville, Warren and Watchung, that portion of the county of Sussex embracing Andover, Andover township, Byram, Franklin, Fredon, Green, Hamburg, Hardyston, Hopatcong, Newton, Ogdensburg, Sparta and Stanhope, that portion of the county of Union embracing Berkeley Heights, Kenilworth, Mountainside, New Providence, Springfield, Summit and Union township and that portion of the county of Warren embracing Allamuchy, Frelinghuysen, Independence and Mansfield.

Thirteenth. That portion of the county of Burlington embracing Easthampton, Evesham, Hainsport, Lumberton, Medford Lakes, Medford, Moorestown, Mount Holly, Mount Laurel, New Hanover, North Hanover, Shamong, Southampton, Westhampton and Woodland, that portion of the county of Ocean embracing Beachwood, Berkeley, Dover, Island Heights, Jackson, Lacey, Lakehurst, Lavallette, Ocean Gate, Pine Beach, Plumsted, Seaside Heights, Seaside Park, South Toms River and Manchester, that portion of the county of Monmouth embracing Brielle, Colts Neck, Farmingdale, Holmdel, Howell, Little Silver, Rumson, Shrewsbury, Shrewsbury township, Tinton Falls and Wall that portion of the county of Camden embracing Cherry Hill, Collingswood, Haddon, Lawnside and Oaklyn.

Fourteenth. That portion of the county of Bergen embracing Little Ferry, Palisades Park and Ridgefield and that portion of the county of Hudson embracing Bayonne,

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Guttenberg, Hoboken, Jersey City, North Bergen, Union city, Weehawken and West New York.

3. Sections 1 and 2 of P. L. 1966, c. 156 (C. 19:46-2 and 19:46-3) and P. L. 1981, c. 561 are repealed.

4. This act shall take effect immediately

STATEMENT

The purpose of this bill is to create 14 Congressional Districts for use beginning with the 98th Congress.

CONGRESSIONAL DISTRICTS

(Pursuant To P.L. 1982, C.1)